

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL EDWARD GILBERT,

Plaintiff,

v.

CLEAR RECON CORP, et al.

Defendants.

No. 2:24-cv-2308-DC-CKD (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff Paul Edward Gilbert proceeds pro se and this matter is before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c)(21). On January 10, 2025, defendant Citibank N.A. (“Citibank”) moved to dismiss plaintiff’s claims against it in the operative first amended complaint (“FAC”) under Rule 8 and Rule 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 52.). This motion is appropriate for decision without oral argument. See Local Rule 230(g). For the reasons set forth below, the motion to dismiss should be granted.

I. Background¹

On May 22, 2024, Citibank purchased the Subject Property at a foreclosure sale. (ECF No. 53 at 4-6.) A Trustee’s Deed Upon Sale transferring title of the Subject Property to Citibank

¹ The court takes judicial notice of Exhibits 1-4 of Citibank’s request for judicial notice. (ECF No. 53). These documents are either records of state court proceedings or publicly available documents in the Nevada County Recorder’s office. See Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007); Mack v. S. Bay Beer Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986).

1 was executed on June 28, 2024. (Id.) On July 30, 2024, Citibank initiated an unlawful detainer
2 proceeding in the Nevada County Superior Court seeking to obtain possession of the Subject
3 Property. (Id. at 8-23.) Plaintiff, who is the named defendant in the unlawful detainer complaint,
4 filed a formal response contesting the foreclosure and the unlawful detainer. (Id. at 25-30.) Trial
5 in the unlawful detainer matter was held on December 9, 2024, and on December 13, 2024, the
6 Nevada County Superior Court issued a Memorandum Decision and Order Regarding Bench
7 Trial, awarding possession of the Subject Property to Citibank. (Id. at 32-37.)

8 Plaintiff initiated this action on August 26, 2024, naming various defendants and bringing
9 claims arising out of and related to the foreclosure. (ECF No. 1.) Plaintiff filed the operative FAC
10 on October 21, 2024. (ECF No. 18.) Under the allegations in the FAC, plaintiff holds a federal
11 Land Patent for the subject property and the Land Patent is “immune from collateral attack.” (Id.
12 at 4.) Plaintiff executed a Deed of Trust for the subject property “with explicit reservation of
13 rights” to trial by jury under the Seventh Amendment, and, accordingly, the subsequent non-
14 judicial foreclosure violated plaintiff’s reserved rights. (Id.) Despite holding an “unassailable
15 title,” plaintiff was subjected to foreclosure proceedings “based on inferior instruments, such as a
16 Deed of Trust, which cannot supersede a valid Land Patent.” (Id. at 5.)

17 The FAC asserted six causes of action as follows: (1) Violation of the Seventh
18 Amendment – Right to Trial by Jury; (2) Fiduciary Breach and Constitutional Principle affirmed
19 in Miranda; (3) Negligence and Gross Negligence; (4) Due Process Violations; (5) Constructive
20 Fraud; and (6) Unjust Enrichment. (Id. at 7-15.)

21 On January 10, 2025, defendant Citibank filed the motion to dismiss presently before the
22 court. (ECF No. 52.) On February 6, 2025, the undersigned noted plaintiff had failed to timely
23 oppose the motion to dismiss filed by Citibank and granted plaintiff 14 days from the date of that
24 order to file an opposition or statement of non-opposition. (ECF No. 62.) Plaintiff was warned
25 that any further failure to respond would be construed as plaintiff’s non-opposition and consent to
26 the granting of the motion. (Id.) Plaintiff did not oppose the motion within the time frame granted.
27 (Id.) In an abundance of leniency for pro se plaintiff, however, the court will construe plaintiff’s
28 arguments in other briefing filed in this case as a statement of opposition to the present motion.

II. Legal Standard

Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure may be warranted for “the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). In evaluating whether a complaint states a claim on which relief may be granted, the court accepts as true the allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989). Particularly because plaintiff proceeds pro se, the court liberally construes the pleadings and affords plaintiff the benefit of any doubt. Bretz v. Kelman, 773 F.2d 1026, 1027 (9th Cir. 1985). Nevertheless, the court is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001).

III. Discussion

A. Constitutional Claims

The FAC fails to state a claim for a violation of plaintiff’s constitutional rights. Plaintiff had no Seventh Amendment jury trial right in connection with a nonjudicial foreclosure as alleged in the first cause of action. See Gasperini v. Ctr. for Humans., Inc., 518 U.S. 415, 418 (1996) (“the Seventh Amendment... governs proceedings in federal court”). As to the fourth cause of action, “California’s nonjudicial foreclosure procedure does not constitute state action and is therefore immune from the procedural due process requirements of the federal Constitution.” Garfinkle v. Super. Ct., 21 Cal. 3d 268, 281 (1978). No constitutional claims lie pertaining to the nonjudicial foreclosure procedure of the subject property. See Gasperini, 518 U.S. at 418; Garfinkle, 21 Cal. 3d at 281. Accordingly, plaintiff’s first and fourth causes of action against Citibank should be dismissed.

B. State-Law Claims

Because the FAC fails to state a federal claim, this court should decline to exercise supplemental jurisdiction over plaintiff’s state-law claims. See 28 U.S.C. § 1367(a), (c)(3). Nevertheless, the FAC pleads no cognizable state law claim against Citibank.

Under California law, breach of fiduciary duty, plaintiff's second cause of action, is a "species of tort distinct from a cause of action for professional negligence." Stanley v. Richmond, 35 Cal.App.4th 1070, 1086 (Cal. Ct. App. 1995). The elements of a cause of action for breach of fiduciary duty are: "(1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach." Id.; see also Benasra v. Mitchell Silberberg & Knupp LLP, 123 Cal.App.4th 1179, 1183 (Cal. Ct. App. 2004). Constructive fraud, pleaded in the fifth cause of action, "is a unique species of fraud applicable only to a fiduciary or confidential relationship." Prakashpalan v. Engstrom, Lipscomb & Lack, 223 Cal. App. 4th 1105, 1131 (2014), as modified on denial of reh'g (Feb. 27, 2014).

Plaintiff does not allege facts demonstrating a fiduciary or confidential relationship between any defendant and plaintiff. Thus, the FAC fails to state a claim for breach of fiduciary duty or constructive fraud.

Moreover, the FAC does not plausibly allege facts showing that Citibank owed plaintiff a legal duty that would support an ordinary negligence claim. The elements of a negligence claim are the following: (1) the defendant owed a legal duty to the plaintiff; (2) the defendant breached this duty; and (3) the defendant's breach proximately caused the plaintiff's injuries. Wiener v. Southcoast Childcare Ctrs., Inc., 32 Cal.4th 1138, 1142 (2004). Here, Citibank owe plaintiff no legal duty. See Schneiderei v. Tr. of Scott & Brian, Inc., 693 F. App'x 733, 735 (9th Cir. 2017) (dismissing negligence claims against purchasers of a property for failure to allege facts sufficient to show a duty owed to the plaintiffs);² Wright v. Ocwen Loan Servicing, LLC, No. CV-10-01014-MMM-OPX, 2011 WL 13223956, at *16 (C.D. Cal. July 12, 2011) (finding "no authority for the proposition that the purchaser of a property at a foreclosure sale owes a duty of care to the property's prior owner"); Monday v. Saxon Mortg. Servs., Inc., No. CIV.2:10-989, 2010 WL 2574080, at *4 (E.D. Cal. June 25, 2010) (dismissing negligence claim for no "authority for the proposition that... the purchaser at a foreclosure sale... owes a duty to ensure the legitimacy of the record keeping..." where the plaintiff allegedly had not defaulted on the loan).

² This unpublished disposition is cited as a persuasive authority and not as precedent. See Ninth Circuit Rule 36-3.

Finally, plaintiff's sixth cause of action, unjust enrichment, is not a standalone cause of action in California. See Abuelhawa v. Santa Clara Univ., 529 F. Supp. 3d 1059, 1070 (N.D. Cal. 2021) ("California law is clear: 'Unjust enrichment is not a cause of action.'") (citations omitted). Nevertheless, to any extent plaintiff could bring a cause of action involving unjust enrichment, he would be required to show "receipt of a benefit and [the] unjust retention of the benefit at the expense of another." Peterson v. Cellco P'ship, 164 Cal. App. 4th 1583, 1593 (2008). The FAC fails to plausibly allege unjust retention of a benefit by Citibank.

E. Leave to Amend

Leave to amend should be freely granted when justice so requires. Fed. R. Civ. P. 15(a). However, the court does not have to allow futile amendments. See Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983). Here, plaintiff has separately moved for leave to file a second amended complaint. (ECF Nos. 49, 50.) The undersigned has reviewed the proposed second amended complaint, found it fails to state a claim, and recommended the motion be denied. (See ECF No. 73.) It now clearly appears that granting further leave to amend plaintiff's claims against Citibank would be futile. Accordingly, the dismissal of the claims in the FAC should be without further leave to amend.³

IV. Recommendation

For the reasons set forth above, IT IS HEREBY RECOMMENDED as follows:

1. Defendant Citibank N.A.'s motion to dismiss (ECF No. 52) be granted.
2. Plaintiff's claims in the FAC against Citibank N.A. be dismissed without leave to amend for failure to state a claim.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned

³ Because it is being recommended the claims in the FAC be dismissed for failure to state a claim, and in the interests of judicial economy, the undersigned does not address defendant's alternate argument that the FAC fails to comply with Rule 8 of the Federal Rules of Civil Procedure.

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
2 shall be served on all parties and filed with the court within seven (7) days after service of the
3 objections. Failure to file objections within the specified time may waive the right to appeal the
4 District court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951
5 F.2d 1153, 1156-57 (9th Cir. 1991).

6 Dated: March 20, 2025


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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